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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 702

SEABOARD & WESTERN AIRLINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE CIVIL AERONAUTICS BOARD IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 284-289) is not yet officially reported. The pertinent orders and findings of the Civil Aeronautics Board (R. 86, 185, 193, 266, 277) have not been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 27, 1949 (R. 290). The petition

for a writ of certiorari was filed on March 25, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

QUESTIONS PRESENTED

During the pendency of proceedings to fix rates for the carriage of airmail, the Civil Aeronautics Board established temporary provisional rates to remain in effect until the determination of final rates, which would retroactively supersede the temporary rates. The Board denied petitioner intervention in the temporary mail rate proceedings, but granted it limited permissive intervention in the final mail rate proceedings. The questions presented are:

1. Whether orders of the Civil Aeronautics Board fixing temporary mail rates are judicially reviewable.

2. Whether orders of the Board denying leave to intervene in temporary mail rate proceedings are judicially reviewable.

3. Whether petitioner is entitled to intervene in the final mail rate proceedings to an extent greater than that permitted by the Board.

STATUTE AND REGULATION INVOLVED

The pertinent provisions of the Civil Aeronautics Act, 52 Stat. 973, as amended, and of the Economic Regulations of the Civil Aeronautics Board (14 C.F.R. (1949 ed.) 285.6, now Section 302.6 (14 F.R. 4355)) are set forth in the Appendix, *infra,* pp. 17-21.

STATEMENT

On December 10, 1948, and January 6, 1949, petitioner sought leave to intervene in proceedings under Section 406 of the Civil Aeronautics Act (Appendix, *infra*, pp. 17-19) relating to the rates to be paid by the United States for transatlantic carriage of airmail by American Overseas Airlines, Inc., Pan American Airways, Inc. and Transcontinental & Western Air, Inc. (TWA) (R. 82, 86, 124, 185, 198, 266). Petitioner alleged that it was engaging in air transportation of cargo without mail pay or subsidy in competition with these three carriers and that there was "grave danger" that the mail payments made to them would be used to subsidize uneconomical property carriage operations at rates which would threaten petitioner's ability to survive (R. 84, 127, 200).

Pan American, American Overseas, and TWA are certificated carriers authorized to transport mail, passengers and cargo over designated transatlantic routes. Petitioner is a "Large Irregular Air Carrier". Its operating authority was obtained by registering with the Civil Aeronautics Board under the blanket exemption provisions contained in the then Section 292.1 of the Board's Economic Regulations (R. 2, 82).[1] Petitioner is

[1] 14 C.F.R. (1949 Ed.) 292.1. This part has been redesignated, and currently is Part 291 of the Board's Economic Regulations. See 14 F.R. 4347. There are approximately 100 "Large Irregular Carriers" and 2,000 "Small Irregular Carriers" authorized to engage in limited air transportation operations pursuant to this regulation. These carriers are authorized to engage in the domestic air transportation of

not authorized to carry mail, nor does its letter of registration authorize it to carry transatlantic passengers (R. 83, 128, 201). In issuing the regulation under which petitioner secured its letter of registration, the Board stated that its authorization of irregular services was justified because such services would not have "an adverse competitive effect" on certificated carriers and would "fill a need" which could not be met by regularly scheduled carriers. Regulations Serial No. 388, dated May 5, 1947, 12 F. R. 3076.

The Board found that petitioner had failed to allege any matter showing that it had a substantial interest in the mail pay proceedings such as would entitle it to intervene as of right under the Board's regulations (R. 185, 266; Section 285.6, Appendix, *infra,* p. 19). Nevertheless, the Board found that "it would be in the public interest to permit limited intervention in the determination of a final mail rate as a matter of discretion, because it would produce improved analyses with respect to any issues as to the extent, if any, to which cargo operations should be underwritten by 'need' mail pay" (R.

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passengers and property without limitation as to points served and similar world-wide air transportation of property only. By definition contained in the Board's Regulations, an Irregular Air Carrier is one who, among other things, "does not operate, or hold out to the public expressly or by course of conduct that it operates, one or more aircraft between designated points * * * regularly or with a reasonable degree of regularity." A carrier is not deemed to be an Irregular Air Carrier unless the services performed by it "are of such infrequency as to preclude an implication of a uniform pattern or normal consistency of operation between * * * designated points." Section 292.1. See *Civil Aeronautics Board* v. *Modern Air Transport,* 179 F. 2d 622, 625 (C.A. 2).

185, 267).[2] Accordingly, petitioner was permitted to intervene "as a matter of discretion", such intervention "to be limited to the final mail rate determination, and then only to such issues as relate to cargo operations and the extent, if any, to which such cargo operations should be underwritten with 'need' mail pay" (R. 186, 267).

During the pendency of the mail rate proceedings, the Board has established temporary rates to remain in effect on a provisional basis until retroactively adjusted to conform with the final rates ultimately fixed.[3] Intervention in the proceedings

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[2] In the case of TWA, no proposal for a final mail rate had yet been made. Accordingly, the petition for intervention was denied "without prejudice to its right to renew the petition upon the issuance by the Board of a show cause order proposing a final mail rate" for TWA (R. 87).

[3] The temporary rate orders here sought to be reviewed provided that the proceedings shall "remain open pending entry herein of an order fixing a final rate or rates for the period January 1, 1946 through December 31, 1948, inclusive, which said final rate or rates may be higher or lower than the temporary rates fixed herein" (R. 198, 281). The economic factors present in air transportation since 1946 which made such temporary rates necessary have been fully described by the Board in a prior proceeding. *National Airlines, Inc., Mail Rates*, 9 C.A.B. 264 (1948), petition for review *sub nom. Air Line Pilots Association, International* v. *Civil Aeronautics Board*, dismissed without opinion (April 23, 1948, C.A. D.C.), certiorari denied, 335 U.S. 816. The Board there stated (9 C.A.B. at 266):

"Our temporary rate procedure arose out of a combination of circumstances affecting air transportation during the past 2 years. Rapidly rising costs, falling load factors, and extensive preparation for prospective traffic in substantial excess of that which materialized have combined to create a serious financial condition in the air transport industry. It became difficult or impossible for carriers to secure funds through the sale of stock, and more recently, it became equally difficult to secure borrowed capital on reasonable terms. During this period the permanent rates in effect in a number of cases

to fix these temporary rates was denied on the ground that such intervention might unduly delay the proceedings. (R. 87, 185-186, 267). The Board noted that by the delay the very purpose of the temporary rate would be defeated (R. 87).

Petitioner sought review in the court of appeals of (1) the latest orders fixing temporary rates for Pan American and American Overseas, (2) the orders denying intervention in the temporary mail rate proceedings and (3) the orders granting limited intervention in the final mail rate proceedings. The petitions for review were consolidated for hearing and decision in the court below (R. 284). The court below held that it was without jurisdiction to review the first two of these types of orders because of their interlocutory nature. And with respect to

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were quite apparently inadequate. Such inadequate mail pay caused, and would clearly continue to cause, unreasonable depletion of working capital, thus increasing the carriers' need for funds which had become increasingly difficult to secure through normal channels. Our permanent rate procedure was wholly inadequate to meet the situations thus created. Compliance with substantive and procedural statutory requirements necessarily applicable to such proceedings rendered it impossible to make final rates effective in time to correct the critical financial emergency in which many carriers found themselves. Some method of placing more nearly adequate mail pay in the hands of the carriers during this period became essential. To accomplish this purpose, the Board adopted a procedure which would enable it to issue a rate order in advance of determination by the Board of the many questions upon which the fixing of a final rate must depend. Thus a so-called temporary rate order does not fix a final rate but merely establishes a conservative basis for payment upon estimated accrued obligations of the Government, pending the determination of a permanent rate which may be either higher or lower than the temporary rate theretofore in effect. It is our practice to allow a margin so that temporary rates on the basis of our best estimates will be somewhat less

the third class—the intervention orders in the final rate proceedings—the court held that the limited intervention permitted by the Board fully protected petitioner's rights, and it accordingly affirmed the orders (R. 284-290). Petitioner here attacks each of these determinations.

ARGUMENT

1. The court below correctly held that orders establishing temporary mail rates, and orders denying intervention in temporary mail rate proceedings are interlocutory, and non-appealable.

There is nothing definitive about temporary mail rate orders. On the contrary, they are wholly provisional, or as petitioner puts it, they involve "payments on account" (Pet. 3). As the court below stated, "The Board, in its show cause orders relating to the final mail pay rates * * * clearly contemplates that the final rates will operate retroactively over the entire period during which the temporary rates are in effect. Thus, any excess of the temporary rates over rates finally fixed as proper will be recoverable either by credit or rebate" (R. 289). It is clear that such orders are interlocutory in every sense of that term.

Although Section 1006(a) of the Act (Appendix, *infra*, p. 19) provides for review of "any order" of the Board, it is clear that the reviewing jurisdic-

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than the probable final rate. Nonetheless, all temporary rates are subject to retroactive adjustment so that in no event can a carrier be permitted to retain more than the amount ultimately found to be proper upon the fixing of a permanent rate."

tion conferred upon the courts is limited to "final" orders. *Federal Power Commission* v. *Metropolitan Edison Co.*, 304 U. S. 375;[4] *Chicago & Southern Air Lines* v. *Waterman Steamship Corp.*, 333 U. S. 103; *Eastern Utilities Associates* v. *Securities and Exchange Commission*, 162 F. 2d 385 (C.A. 1); see *Rochester Telephone Corp* v. *United States*, 307 U. S. 125, 130-131. The rationale of this rule is that the courts should not be subjected to the burdens of piecemeal appeals and the administrative process should not be subjected to interruption and delay since the courts are able at the conclusion of the administrative proceeding to review the final orders entered, and to correct any errors of law that may have occurred during the course of the proceeding.

It is true that interlocutory orders have in certain circumstances been held to be reviewable, but only when the controversy has proceeded to a point where a losing party would be irreparably injured if immediate review were precluded. See *Republic Natural Gas Co.* v. *Oklahoma*, 334 U. S. 62, 67; *Cohen* v. *Beneficial Loan Corp.*, 337 U. S. 541, 546-7; *Utah Fuel Co.* v. *National Bituminous Coal Commission*, 306 U. S. 56; *Standard Airlines, Inc.* v. *Civil Aeronautics Board*, 177 F. 2d 18 (C.A. D.C.). But petitioner is not threatened with any

[4] The provisions of Section 313 (b) of the Federal Power Act of 1935 (49 Stat. 860, 16 U.S.C. 825l(b)) are indistinguishable from the provisions of Section 1006(a) of the Civil Aeronautics Act insofar as the question under consideration is concerned.

such injury. Without referring to its own situation, or alleging that the temporary rates are excessive, it argues only that "if" the rates are excessive, a non-subsidized competitor will "in all probability" be placed at a competitive disadvantage; that the subsidized carrier "may" try to eliminate his non-subsidized competitor; and that even if the excessive payments are recovered, the non-subsidized carriers "may" have been forced out of business (Pet. 14). Such injuries are wholly conjectural.[5] In the absence of some showing of an immediate, substantial and irreparable injury to petitioner, judicial review of the Board's interlocutory orders is not warranted. Should the certificated carriers use the mail pay awarded them to engage in unfair competition, the Act provides remedies therefor.[6]

Petitioner also argues that the public interest

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[5] The Board's findings in this case indicate how remote is the possibility that its temporary rates will prove to have been excessive (R. 194, 278). The Board has stated that its policy is to fix temporary rates only where it appears, among other things, that the existing mail rate "is substantially inadequate in terms of what reasonably may be anticipated as a *minimum* final rate." *Transcontinental & Western Air, Inc., Mail Rates,* Order No. E-3028, adopted July 20, 1949, show cause order made final by Order No. E-3128, adopted August 10, 1949. (Emphasis supplied.) Cf. R. 72-73. As a result of this policy, the final mail rates fixed have almost invariably been higher than antecedent temporary rates.

[6] Specific remedies are provided for the protection of carriers against unfair competition by proceedings before the Board (§ 411) and by injunction proceedings in a district court against unauthorized competition (§ 1007(a)). And any person may file a complaint with the Board with respect to any violation or omission of any requirement of the Act (§ 1002).

may suffer directly from excessive temporary mail rates, even though proper final rates are ultimately fixed, because the carrier receiving the excessive payments may not then have the funds to repay or the Board may not order the refund for fear of jeopardizing the carrier's operations (Pet. 15). In other words, the public interest "may" suffer irreparable injury in the absence of immediate review. Even if it be assumed, however, that petitioner has standing here as a defender of the public interest,[7] there is no basis for this speculative contention. No certificated air carrier has gone bankrupt and none has failed to meet its obligations to the United States. Contrary to the inference petitioner seeks to draw, the Board has never fixed a final rate which has not been made retroactively applicable during the entire period of effectiveness of the temporary rate or rates it replaced. The cases referred to by petitioner did not involve temporary rates and are inapposite here.[8]

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[7] As the court of appeals pointed out (R. 287), it is the function of the Postmaster General, not the petitioner, to assist the Board in the protection of the public interest in mail rate proceedings. Certainly if the Postmaster General, who pays the compensation fixed by the Board, has found no occasion to doubt his ability to recapture excessive payments, if any, the fears of an outsider do not justify judicial intervention at a preliminary stage.

[8] In all of the cases cited by petitioner (Pet. 15, note 3), the question was upon what date a final rate replacing and reducing a prior *final* rate should be made effective. Although the Board has the power to, and customarily does, make new final rates effective from the date of the institution of the proceeding, in the cited cases the Board made the reduced final rates effective prospectively only. In *Pennsylvania-*

The importance of the finality rule to the orderly operation of the administrative process cannot be stressed too strongly. Review of orders which are purely interlocutory encourages litigation which may be rendered needless; it burdens the courts with piecemeal appeals of matters which could be heard and determined in a single proceeding; and it provides a ready weapon for hamstringing effective administrative action.[9] The finality rule is especially necessary here. Judicial review, and the necessary delays which it involves, would destroy the efficacy of temporary rates—the avowed pur-

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Central Airlines Corporation, et al., Motions, 8 C.A.B. 685, affirmed, *Transcontinental & Western Air, Inc.* v. *Civil Aeronautics Board*, 169 F. 2d 893 (C.A. D.C.), affirmed, 336 U.S. 601, the Board pointed out that its decision in these cases "does not constitute an immutable holding that we will in no case make a downward readjustment retroactive" (8 C.A.B. 702, n. 45), and in *Western Air Lines, Inc., Mail Rates, Statement of Tentative Findings and Conclusions*, Order No. E-2333, December 30, 1948, the Board proposed to recapture excessive earnings during the pendency of a proceeding to fix a new rate by making the new rate retroactive to the date the proceeding was instituted by the carrier's petition. But irrespective of the policies adopted by the Board in cases in which no specific notice of the possibility of a retroactive reduction of a prior final rate is given, such cases afford no precedent in cases where the temporary rate order specifically provides that the final rate, whether higher or lower, will be retroactive. This is evident from some ten decisions of the Board, subsequent to those cited by petitioner, in which the Board reduced final mail rates retroactively to the date of an order to show cause why reductions should not be instituted. See, *e.g., Transcontinental & Western Air, Inc., Mail Rates*, 6 C.A.B. 595. The temporary rate orders before the Court specifically contemplate that the provisional rates there fixed shall be superseded by the final rates to be subsequently established retroactively (*supra*, p. 5, note 3).

[9] See *Republic Natural Gas Co.* v. *Oklahoma*, 334 U.S. 62, 69.

pose of which is to tide the airlines over during the sometimes prolonged proceedings which will culminate in definitive mail rates.[10] The court below correctly held that the temporary rate orders were not finally dispositive of any rights of petitioner and, therefore, were not reviewable (R. 289).

It is equally clear that the denial of intervention in the temporary rate proceedings was properly held not appealable. Since the determination of the temporary rates themselves does not constitute any final disposition of rights, it is obvious that the denial of intervention in those interlocutory proceedings is not a final disposition of rights.[11] Moreover, the delays occasioned by judicial review of denial of intervention would as effectively frustrate the temporary rate program as would review of the temporary rate orders.

2. The court below properly refused to disturb the Board's orders permitting limited intervention in the final mail rate proceedings.

The Board permitted intervention as to issues relating "to cargo operations and the extent, if any, to which such cargo operations should be under-

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[10] See statement of Board in *National Airlines, Inc., Mail Rates, supra*, p. 5, note 3. We do not wish to minimize the importance of prompt determination of mail rates (cf. Pet. 15, note 2), but the issues in these proceedings are complex and, as a practical matter, it has not been possible to avoid the stopgap remedy of temporary rates.

[11] See, *infra*, p. 14, for discussion of appealability of intervention orders under the Civil Aeronautics Act generally.

written with 'need' mail pay" (*supra*, p. 4). This will obviously permit full participation as to matters relevant to the operations of the certificated carriers which are alleged to be competitive with petitioner. Moreover, the Board's regulation 285.6 (Appendix, *infra*, pp. 19-21) permits presentation of relevant evidence by anyone, whether or not possessing the status of formal intervenor. If petitioner has a legal interest here,[12] it is solely as a competitor in the carriage of cargo and that interest has been fully protected by the intervention allowed.[13] Only when and if it develops, as the rate hearings proceed, that the petitioner has been denied the opportunity to participate in some substantial way, can it successfully maintain that the intervention orders prejudice it.

It should be noted in this connection that the orders denying or limiting intervention, even if

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[12] In the event that certiorari is granted, the Board reserves the right to contend that petitioner has no right whatever of intervention in the proceedings. See *Air Line Pilots Association, International* v. *Civil Aeronautics Board*, O. T. 1948, No. 86, Brief in Opposition, pp. 14-15.

[13] Petitioner asserts a conflict between the decision of the court below and that of this Court in *Federal Communications Commission* v. *Sanders Radio Station*, 309 U.S. 470 (Pet. 18), which permitted appeal by a competitor with no legal interest because the appeal provisions of the Federal Communications Act, 48 Stat. 1064, as amended, 47 U.S.C. 151, *et seq.*, would otherwise have been rendered nugatory (Pet. 18). That Act relies on appeals by competitors to vindicate the public interest. In Civil Aeronautics Act mail pay proceedings, however, the Postmaster General assists the Board in representing the public interest. Intervention and appeal by private persons in mail pay proceedings are, therefore, properly limited to matters in which the intervenor is deemed to have a legal interest.

wholly erroneous, did not dispose of petitioner's "rights." When final mail rate orders are entered, petitioner will be able, if it still so desires, to secure a review of such orders and the orders limiting its intervention. If it is then established that petitioner's "right" to intervene was impaired, it may have such orders set aside, and the cases remanded for further proceedings in which it may participate to the extent declared proper by the court. Whether or not the limited intervention orders were proper, those orders are not appealable until the proceedings before the Board are finally completed.

The cases concerning intervention in judicial proceedings are not applicable here. Thus *Brotherhood of Railroad Trainmen* v. *Baltimore & Ohio R. R. Co.*, 331 U. S. 519, held denial of intervention in a district court action immediately appealable. But the Court's ground of decision (see p. 524) was that "since [the intervenor] * * * cannot appeal from any subsequent order or judgment in the proceeding unless he does intervene, the order denying intervention has the degree of definitiveness which supports an appeal therefrom. See *Pipe Line Co.* v. *United States*, 312 U. S. 502, 508." Cf. *Dickinson* v. *Petroleum Conversion Corp.*, 338 U. S. 507. It is clear that the reason for this rule is not applicable to orders denying or limiting intervention in Civil Aeronautics Board proceedings. Judicial review of a final order of the Board may

be obtained by a person demonstrating a substantial interest in that order; there is no requirement that a person have been a party to the administrative proceeding, at least where he has exhausted his remedies by seeking intervention. Section 1006(a) (Appendix, *infra*, p. 19). In view of this fact, there will be no definitive disposition of petitioner's asserted interests until the proceedings are finally concluded.[14] Since the intervenor may appeal from the final order, there is no basis for excepting him from the usual finality rule. Cf. *Dickinson* v. *Petroleum Conversion Corp., supra.*

Neither the courts nor petitioner can know at this stage of the proceedings whether petitioner will have cause or desire to appeal from the final orders which may be entered. The limited intervention permitted petitioner may prove fully adequate to allow it to engage in the proceedings to the full extent desired. Moreover, it is entirely possible that the petitioner will be fully satisfied with the substantive orders—the final mail rate orders—which are ultimately entered. The cogent reasons for general application of the finality rule (discussed *supra*, p. 11) are apposite here.

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[14] We have found only two cases holding denial of intervention in an administrative proceeding immediately appealable. *Alston Coal Co.* v. *Federal Power Commission*, 137 F. 2d 740 (C.A. 10); *Okin* v. *Securities and Exchange Commission*, 143 F. 2d 960 (C.A. 2). The *Alston* holding of appealability may be justified because the applicable statute (Natural Gas Act, Sec. 19, 52 Stat. 831, 15 U.S.C. 717r (b)) permits appeals only by parties to the administrative proceeding. But the court's reliance upon the decision of this Court in *Federal Communications Commission* v. *National Broadcasting*

CONCLUSION

The decision below is correct insofar as it affects petitioner adversely, and there is no conflict of decision. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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MAY, 1950.

Company, 319 U.S. 239, was misplaced. The *National Broadcasting* case neither considered nor decided the question of when review of an intervention order becomes available. The particular order in question was reviewed at the time of, and as an incident to, the review of the final order in the proceeding. The *Okin* case followed the *Alston* case without elaboration.

APPENDIX

The pertinent provisions of the Civil Aeronautics Act of 1938, as amended,[15] are as follows:

> Sec. 406(a) The [Board] is empowered and directed, upon its own initiative or upon petiiton of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith (including the transportation of mail by an air carrier by other means than aircraft whenever such transportation is incidental to the transportation of mail by aircraft or is made necessary by conditions of emergency arising from aircraft operation), by each holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such date as it shall determine to be proper; (2) to prescribe the method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (3) to publish the same; and the rates so fixed and determined shall be paid by the Postmaster General from appropriations for the transportation of mail by aircraft.

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[15] Act of June 23, 1938, 52 Stat. 973, 49 U.S.C. 401 *et seq.*; Reorg. Plan No. IV, Sec. 7, effective June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, 49 U.S.C. 401 *et seq.*

(b) In fixing and determining fair and reasonable rates of compensation under this section, the [Board], considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the [Board] shall take into consideration, among other factors, the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.

(c) Any petition for the fixing of fair and reasonable rates of compensation under this section shall include a statement of the rate the petitioner believes to be fair and reasonable. The Postmaster General shall introduce as part of the record in all proceedings under this

section a comprehensive statement of all service to be required of the air carrier and such other information in his possession as may be deemed by the [Board] to be material to the inquiry.

* * * * *

Sec. 1006. (a) Any order, affirmative or negative, issued by the [Board] under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the circuit courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

Section 285.6 of the Economic Regulations of the Civil Aeronautics Board (14 C. F. R. (1949 Ed.) 285.6; now section 302.6 (14 F. R. 4355)), provided:

APPEARANCES BY THIRD PERSONS AND FORMAL INTERVENTIONS.

(a) *Appearances by third persons.* Any person, including any State, political subdivision thereof, State aviation commission, or other public body, may appear at any hearing and present any evidence which is relevant to the issues. Such persons may also suggest questions or interrogatories to be propounded

by public counsel to witnesses called by other persons. With the consent of the examiner, or of the Board, if the hearing is held before the Board, such persons may also cross-examine witnesses directly.

(b) *Formal interventions.* (1) Any person having a substantial interest in the subject matter of any proceeding may petition for leave to intervene in such proceeding and may become a party thereto upon compliance with the provisions of this paragraph. In general, such petitions will not be granted unless it shall be found:

(i) That such person has a statutory right to be made a party to such proceeding; or

(ii) That such person will or may be bound by the order to be entered in the proceeding; or

(iii) That such person has a property or financial interest which may not be adequately represented by existing parties, if such intervention would not unduly broaden the issues or delay the proceeding.

However, the denial of such a petition for leave to intervene shall not prevent the petitioner from participating in the proceeding in the manner described in paragraph (a) of this section.

(2) Unless otherwise ordered by the Board every petition for leave to intervene shall be filed with the Board prior to the first prehearing conference, or in the event that no

such conference is to be held, not later than 10 days prior to the hearing. Copies of the petition shall be mailed or delivered to each party to the proceeding prior to the filing of the petition. The Board, however, may pass upon any such petition without receiving testimony or argument either from the petitioner or from other parties to the proceeding. The petition shall clearly set forth the interest of the petitioner, and shall otherwise comply with the requirements of section 285.3.

(3) No petition for leave to intervene not filed within the time limited by subparagraph (2) of this paragraph, will be entertained unless the petitioner shall clearly show good cause for his failure to file such petition within the time so limited. In the event that such petition is heard by an examiner, his determination shall be governed by the standards set forth in this section, but no decision by an examiner on such petition shall be binding on the Board. Interventions provided in this section are for administrative purposes, and no decision to grant leave to intervene shall be deemed to constitute a finding or determination that the intervening party has such a substantial interest in the order that is to be entered in that proceeding as will entitle it to demand court review of such order.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1950 688488 693